

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KIMBRA CRISWELL,)	
)	
Plaintiff,)	
v.)	C.A. No. 05-CV-00321 GMS
)	
LYDIA ADAIR MCFADDEN and CHRISTIANA)	JURY TRIAL DEMANDED
CARE HEALTH SERVICES, INC.,)	
)	
Defendants.)	

**DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR MOTION IN *LIMINE*
TO PRECLUDE PLAINTIFF'S EXPERT ECONOMIST FROM PRESENTING
EXPERT TESTIMONY**

WHITE AND WILLIAMS LLP

/s/ Deborah J. Massaro
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Health Services, Inc.*

Date: March 30, 2007

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KIMBRA CRISWELL,)	
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Defendants, Lydia Adair McFadden and Christiana Care Health Services, Inc., rely on, and hereby incorporate by reference the assertions in their opening brief respectfully requesting that the Court enter the attached order precluding Plaintiff's expert economist, Royal A. Bunin, MBA, from presenting expert testimony at trial. In further support of their motion, Defendants state the following:

1. In paragraph 4 of Plaintiff's response, Plaintiff states that Bunin relied upon Dr. Dewanjee's supplemental report. This is impossible since Dr. Dewanjee's initial report was submitted January 19, 2007, and his supplemental report was submitted March 27, 2007, while Bunin's initial report was propounded January 10, 2007. Thus, Plaintiff's initial Rule 26 disclosure relied solely upon Plaintiff's testimony and interrogatory responses.¹

2. Plaintiff also states that Bunin relied upon Dr. Dewanjee's office notes, however, again Bunin does not cite to any medical record in his initial report

¹ See A106-112 (Report of Royal A. Bunin, MBA dated January 8, 2007, but not produced until January 10, 2007); A97-99 (Expert report of Sumit Dewanjee, M.D. dated January 19, 2007).

dated January 8, 2007. Thus, Bunin's methodology was to write a report, and check his facts later. This is not an acceptable method.²

3. Plaintiff's medical expert never states, either in his medical record or even his deposition taken March 29, 2007, that Plaintiff cannot work full-time in the future and this is the entire premise upon which Bunin's report is based.

WHEREFORE, Defendants, Lydia Adair McFadden and Christiana Care Health Services, Inc., respectfully request that this Honorable Court enter an order precluding Plaintiff's economic expert from presenting expert testimony at trial.

Respectfully submitted,

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² *In re TMI Litigation*, 193 F.3d 613, 669 (3d Cir. 1999), amended by 199 F.3d 158 (3d Cir. 2000). Expert opinions cannot be based upon speculation or conjecture. *Oxendine v. State of Delaware*, 528 A.2d 870, 873 (Del. 1987). An expert's conclusions must be based upon a reasonable degree of certainty that a fact is true or untrue. *Id.*

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CERTIFICATE OF SERVICE

I, Deborah J. Massaro, Esquire, do hereby certify that on this 30th day of March, 2007, two copies of **DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR MOTION IN LIMINE TO PRECLUDE PLAINTIFF'S EXPERT ECONOMIST FROM PRESENTING EXPERT TESTIMONY** were served via electronic filing and delivered U.S. First Class Mail, postage prepaid upon the following:

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